

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2615 of 1999

to

FIRST APPEAL No 2628 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : YES  
of the judgement? No
4. Whether this case involves a substantial question : YES  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

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HEIRS OF DECD.RATILAL

CHATURBHAI PATEL

Versus

STATE OF GUJARAT  
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Appearance:

FIRST APPEALS NO.2615 to 2622 of 1999

MR GM AMIN for appellants

MR PG DESAI, GOVERNMENT PLEADER for Respondents

FIRST APPEALS NO.2623 to 2628 of 1999

MR GM AMIN for appellants

MR RC KODEKAR, AGP for respondents  
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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 30/08/1999

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

By means of filing the above-numbered First Appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the appellants have challenged determination of compensation made by the learned 2nd Extra Assistant Judge, Vadodara at the rate of Rs.4/- per sq.mt. in Land Reference Cases No.2725/97 to 2740/97 decided on November 12, 1998 and claimed enhanced compensation at the rate of Rs. 20/- per sq.mt. for their acquired lands.

2. A proposal was received by the State Government to acquire agricultural lands of village Shripur-Timbi, Taluka : Vaghodia, District : Vadodara for the public purpose of construction of canal under Narmada Canal Project. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Shripur Timbi were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on December 22, 1992. Those whose lands were sought to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, Special Land Acquisition Officer, Vadodara had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that agricultural lands of village Shripur Timbi which were specified in the notification published under section 4(1) of the Act were needed for the public purpose of construction of canal under Narmada Canal Project. Therefore, declaration under section 6 of the Act was made which was published in Government Gazette on July 14, 1994. Thereafter, interested persons were served with notices for determination of compensation. The claimants appeared before Special Land Acquisition Officer and claimed compensation at the rate of Rs. 20/per sq.mt. However, having regard to the materials placed before him, Special Land Acquisition Officer by his award dated April 28, 1995 offered compensation to the claimants at the rate of Rs. 27,000/- per Hectare for irrigated lands and Rs. 18,000/- per Hectare for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in

writing requiring Special Land Acquisition Officer to refer the matter to Court for determination of compensation. Accordingly, references were made to the District Court, Vadodara, which were numbered as Land Reference Cases No. 2725/97 to 2740/97. In the reference applications it was pleaded by the claimants that their acquired lands were highly fertile and as they were deriving substantial income from the sale of agricultural produces, they were entitled to compensation at the rate of Rs. 20/- per sq.mt. The reference applications were contested by the acquiring bodies and it was, inter-alia, pleaded that determination of compensation by the Special Land Acquisition Officer was just and, therefore, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determined were raised by the reference Court. In order to substantiate the claim advanced in the reference applications, the claimants of Land Reference Cases No.2735/97 and 2738/97 i.e. Shantilal Mangaldas Patel was examined at Exh.10. In his deposition, the witness gave particulars about the lands acquired and also produced 7/12 Extract collectively at Exh.15 in respect of lands acquired. The witness claimed before the Court that the claimants were able to raise crops of paddy, cotton, wheat, fenugreek, coriander seeds, asariyu, gram, mustard etc. The witness asserted in his evidence that he was able to raise 70 maunds of paddy, the price of which at the relevant time was Rs. 95/- per maund. The witness claimed that he was able to get 4000 sheaves (bundles of fodder) from land admeasuring one Bigha and the price of 100 sheaves was Rs. 30/-. According to the witness, during winter season he was able to raise crop of 50 maunds of wheat per Bigha, the price of which at the relevant time was Rs. 100/- per maund. The witness deposed before the Court that some of the claimants were also able to raise crops of cotton, fenugreek as well as coriander seeds. According to this witness, each claimant was deriving net income of Rs.12,000/- per Bigha by sale of agricultural produces. The witness admitted in his cross-examination that he had no documentary evidence to substantiate his claim that he was able to reap crops of paddy, wheat etc. as stated in his examination-in-chief or that the price of respective commodity was as claimed by him before the Court. Valuation expert Mr. Harshad Ishwarbhai Shah was examined by the claimants at Exh.16 to establish that they were entitled to claim compensation at the rate of Rs.20/- per sq.mt. On behalf of the acquiring authorities, Vishnubhai Jamnadas Rajput, who was serving as Deputy Collector in the Office of Collector, Bharuch, was examined at Exh.22. On appreciation of evidence led

by the parties, the reference Court held that the compensation determined by the Land Acquisition Officer was inadequate. The reference Court found that references were not barred by limitation. In view of paucity of evidence, reference Court held that it was not possible to determine market value of the lands acquired on yield basis. However, on the basis of sale instances referred to by the Land Acquisition Officer in his award, reference Court deduced that the claimants were entitled to compensation at the rate of Rs. 40,000/- per Hectare by the impugned award, giving rise to present appeals.

3. Mr. G.M.Amin, learned Counsel for the appellants submitted that in view of the evidence led by the appellants, the reference Court ought to have awarded compensation to the claimants at the rate of Rs.20/- per sq.mt. It was claimed that the lands acquired were irrigated lands and as the claimants were raising different crops, such as, paddy, wheat, cotton, vegetables etc., claimed compensation ought to have been accepted by the reference Court. What was claimed was that village Shripur Timbi is fully developed having all primary facilities like water, electricity, drainage etc. and, therefore, in view of the overall development which had taken place near the acquired lands, reference Court ought to have awarded compensation to the claimants at the rate of Rs. 20/- per sq.mt.

4. Mr. P.G.Desai, learned Government Pleader assisted by Mr. R.C.Kodekar, learned A.G.P. submitted that no cogent and admissible evidence was led by the claimants in support of their claim that they were entitled to compensation at the rate of Rs. 20/- per sq.mt. and, therefore, instead of allowing the reference applications, they ought to have been dismissed by the reference Court. The learned Counsel for the acquiring bodies emphasised that no documentary evidence was produced by any of the claimants to establish yield of the crop or price of the crop at the relevant date and, therefore, the appellants were not entitled to enhanced compensation as claimed in the appeals. What was stressed was that as convincing evidence was not led by the claimants to establish that the market value of the acquired lands was Rs.20/- per sq.mt. on the relevant date, the appeals should be dismissed.

5. We have heard the learned Counsel for the parties at length. We have also taken into consideration the record of the case before deciding the present group of appeals. The reference Court has determined market value of the acquired lands on the basis of sale deeds

mentioned and relied on by the Special Land Acquisition Officer in his award dated April 28, 1995. It is well settled that the reference proceedings before the District Court cannot be treated as an appeal against the award of the Land Acquisition Officer and the claimants have to establish before the reference Court market value of the lands acquired by leading cogent and convincing evidence. The sale instances referred to by the Land Acquisition Officer in his award ipso-facto do not become evidence in reference proceedings. If the claimants wanted to place reliance on those sale deeds, they ought to have examined either vendor or vendee or at least scribe of the document to establish before the Court that sale deed was voluntary and consideration mentioned therein had been received by the seller. However, it is an admitted position that the claimants have neither examined vendor nor vendee nor scribe of any of the documents mentioned and relied on by the Land Acquisition Officer in his award. Under the circumstances, we are of the opinion that determination of compensation by the reference Court on the basis of sale deeds referred to and relied on by the Land Acquisition Officer in his award cannot be sustained and is liable to be set aside.

6. If the method adopted by the reference Court for determining market value of the lands acquired is ignored, then the Court is left with no option, but to determine market value of the lands acquired on yield basis. The Supreme Court in the case of State of Gujarat & Ors. v. Rama Rana and others, 1997(3) G.L.R. 1954 has held that oral evidence of witnesses cannot be rejected on the ground that they have failed to produce statistics from agricultural department as to the nature of crops and the price prevailing at the relevant time. What is emphasised therein is that the Court has statutory duty to the society to subject oral evidence to a great scrutiny applying the test of normal prudent man and thereafter to evaluate the evidence objectively as well as dispassionately and reach the finding on compensation. In view of the authoritative pronouncement of the Supreme Court in the above referred to decision, we shall now proceed to subject the oral evidence led by the claimants in this case to great scrutiny applying the test of normal prudent man and make attempt to reach a finding on compensation. The evidence of claimant Shantibhai Mangaldas Patel recorded at Exh.10 indicates that he was able to grow 70 maunds of paddy per Bigha and the value of paddy at the relevant time was Rs. 95/- per maund. His evidence also shows that he was able to realise 4000 sheaves from one Bigha of land and price of 100 sheaves at the relevant time was Rs.30/-. His

evidence further shows that during winter season, he was able to raise 50 maunds of wheat per Bigha, price of which at the relevant time was Rs. 100/- per maund. Though the witness claimed that other crops were being raised by other claimants, no particulars were given by the claimants and, therefore, claim advanced by the claimants that over and above paddy, sheaves, wheat, they were also able to raise crops of cotton, vegetables etc., cannot be accepted. The evidence of witness Shantibhai Mangaldas Patel shows that the claimants were able to realise Rs.7550/- by way of sale of paddy as well as Rs.1200/- by way of sale of sheaves and Rs.5000/- by way of sale of wheat. The total gross income from the above referred to commodities would come to Rs. 13750/-. Necessarily, 50% towards cultivation expenses will have to be deducted in order to determine the net value. Thus, after making deduction of 50% towards cultivation expenses, the net income comes to Rs.6875/-. The Supreme Court in the above referred to decision has held that while determining market value of the acquired lands on yield basis, appropriate multiplier to be applied would be 10 years as settled by several judgments of the Supreme Court. If multiplier of 10 is applied to the facts of the present case, the market value of the lands acquired would be Rs. 68,750/- per Hectare i.e. Rs. 6.87 ps. per sq.mt. which is rounded off to Rs. 7/- per sq.mt. On this basis, in our view, the claimants would be entitled to compensation, in all, at the rate of Rs.7/per sq.mt. The appeals for enhanced compensation, therefore, will have to be allowed accordingly.

For the foregoing reasons, the appeals partly succeed. It is held that the claimant/s in each case would be entitled to compensation at the rate of Rs. 7/per sq.mt. for his acquired lands. Rest of the directions given in the impugned award regarding benefits to be given to the claimants under sections 23(1-A) and 23(2) of the Act and interest are not disturbed at all and are hereby confirmed. There shall be no orders as to costs. Office is directed to draw decree in terms of this judgment.

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(patel)